THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.18879 OF 2006

Dated: 23rd OCTOBER, 2006.

Between :

M/s. Buvanagiri Chemicals Limited, Sy.No.32,
Kesoram village, Bhongir Mandal, Nalgonda District.
Rep. by its Managing Director
S.Panduranga Reddy … Petitioner

And

1. State Bank of India, rep. by its Branch Manager,
   Narayanaguda Branch, Hyderabad,
   And 2 others. .. Respondents

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ORDER :

This writ petition is filed aggrieved by the action of the 1st respondent Bank in rejecting the request of the petitioner for One Time Settlement (OTS) under the guidelines of Reserve Bank of India dated 3-9-2005.

It is not in dispute that the petitioner company having availed a loan from the 1st respondent Bank, committed default in discharging the same. The loan account was classified as Non-Performing Asset (NPA) in the year 2001 and thereafter the 1st respondent Bank filed O.A.No.619 of 2001 in the Debts Recovery Tribunal, Hyderabad, for recovery of Rs.17,04,239/- due from the petitioner company. Since the petitioner company failed to file written statement in spite of service of notice, O.A.No.619 of 2001 was decreed ex parte. That apart, the 1st respondent Bank having initiated the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act') brought the secured assets to sale. Aggrieved by the same, the petitioner filed S.A.No.20 of 2004 before the Debts Recovery Tribunal, Hyderabad and the same is pending.

While so, the Reserve Bank of India vide proceedings dated 3-9-2005 issued certain guidelines for implementation of OTS scheme for recovery of NPAs below Rs.10 crores which are made applicable to small and medium enterprises. The petitioner made a representation

dated 1-2-2006 proposing OTS under the said scheme. The petitioner also remitted a sum of Rs.3,50,000/- by way of demand draft towards 25% of the outstanding due to the 1st respondent Bank. However, the said proposal was rejected by proceedings dated 7-2-2006. Questioning the same, the petitioner filed W.P.No.3190 of 2006 which was disposed of by this Court by order dated 30-6-2006 with a direction to the 1st respondent Bank to consider the proposal of the petitioner afresh as per law. Thereafter, the petitioner made another representation dated 19-7-2006 duly enclosing the demand draft for Rs.3,50,000/-.

The said request of the petitioner was rejected by the 1st respondent Bank by proceedings dated 16-8-2006 which is under challenge in this writ petition.

It is primarily contended by the petitioner that the scheme and guidelines issued by Reserve Bank of India dated 3-9-2005 in exercise of the powers conferred under Section 21 (3) of the Banking Regulation Act, 1949 are binding on the respondents and therefore the 1st respondent ought not to have rejected the proposal of the petitioner for OTS. It is also contended that the respondents failed to appreciate the facts and circumstances of the case in a proper perspective and that the action of the respondents in not granting the benefit of OTS to the petitioner is arbitrary and illegal apart from being discriminatory.

A counter-affidavit filed on behalf of the respondents 1 and 2 stating that the guidelines dated 3-9-2005 issued by the Reserve Bank of India are not applicable to the cases of willful default and therefore the proposal of the petitioner for OTS was rightly rejected.

I have heard the learned Counsel for both the parties and perused the material on record.

It is true that the Reserve Bank of India vide proceedings dated 3.9.2005 issued certain guidelines for implementation of “One Time

Settlement Scheme" for recovery of non-performing assets below rupees ten crores. The said guidelines show that the scheme is to be implemented by all public sector banks. It was also made clear that the guidelines would not cover the cases of willful default, fraud and malfeasance, but only non-performing assets in S.M.E. sector which have become doubtful or loss as on 31st March, 2004 with outstanding balance of Rs. 10 crores and below on the date on which the account was classified as doubtful would be covered. The guidelines are also made applicable to cases on which banks have initiated action under the Securitisation Act and also the cases pending before the Debt Recovery Tribunal/B.I.F.R. subject to consent decree being obtained from the Courts/D.R.Ts./B.IF.R.

In the case on hand, admittedly O.A.No.619 of 2001 was decreed by the Debts Recovery Tribunal, Hyderabad on 13-9-2005. Though the petitioner appears to have filed an application to set aside the said ex parte decree along with a petition to condone the delay, nothing has been placed before this Court to show that any orders have been passed on the said application. Though the guidelines are applicable to the cases pending before the Courts and Tribunals, it was made clear that the same shall be subject to consent decree being obtained from the Courts and the Tribunals. The guidelines do not provide anything for the cases which are already decreed by the Court or Tribunal. Even if the claim of the petitioner that since the decree dated 13-9-2005 is an ex parte decree and since an application for setting aside the ex parte decree is pending the petitioner's case shall be taken as a pending case is accepted, it is for the petitioner to obtain a consent decree from the Tribunal so as to become eligible for OTS under the Reserve Bank of India guidelines dated 3-9-2005. As on today, the fact remains that the petitioner whose account was classified as NPA is a willful defaulter and therefore it is not entitled to the benefit of the OTS scheme.

It is true that the Reserve Bank of India is entitled to lay the

banking policy which is applicable to all the Banking companies. However they are regulatory measures for the purpose of carrying on commercial activity in banking. If they fail to follow, the Banking Regulation Act itself has provided certain consequences.

The guidelines issued by Reserve Bank of India indicating the method of implementation of the OTS scheme for recovery of non-performing assets are merely directory and cannot be held to be mandatory in nature. As a matter of fact, the said guidelines exempted certain category of cases such as cases of willful default, fraud and malfeasance. Similarly, the NPAs crossing Rs.10 crores are also exempted. The guidelines also did not indicate the maximum or minimum amount at which the OTS has to be agreed upon. Thus, it is clear that it is always open to the concerned Bank either to accept or not depending upon the facts and circumstances of the case.

Moreover, the matters relating to recovery of loans are contractual in nature. Particularly the One Time Settlement of accounts is nothing but a compromise between two parties to contract. Such settlement can be arrived at only with the consent of both the parties, particularly the consent of the creditor who has to relinquish a part of his claim and agree to take a lesser amount. In the absence of consent of one of the parties, there cannot be settlement of accounts.

As expressed above, the guidelines are not mandatory in nature and they do not confer any legal right on the petitioner which can be enforced against the respondent Bank. On that ground also, the petitioner cannot seek a Writ of Mandamus.

For the aforesaid reasons, the Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. 23-10-2006
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